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Assessment Opt-Out Policies: State responses to parent pushback

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With new state assessments kicking into full swing across the country, schools are seeing more and more parents wanting to opt out their children. Determining whether states allow assessment opt-outs can be complex and is constantly evolving. In some states the answer is clear: State policies either allow or prohibit state assessment opt-outs, or state departments of education issue clear guidance that opt-outs are not allowed.

In many states, however, the guidance as to whether opt-outs are allowed is far less clear, as departments of education are often silent on the issue. Additionally, many states have no consequences in place for not participating in mandatory assessments, adding a further wrinkle to defining what it means for states to truly prohibit opt-outs.

“Confusion is growing as parents increasingly want to opt their children out of state tests. Some state policies are clear on this issue, but many are still working through the process.”

KEY TAKEAWAYS

State laws in California and Utah allow parents to opt their children out of state assessments for any reason.

Legislation introduced in New Jersey would allow opt-outs. Similar legislation in Mississippi failed to progress.

Laws in some states – such as Arkansas and Texas – clearly prohibit opt-outs, while the law is less clear in other states.



The information provided in this report is not exhaustive and derives from a variety of sources. It is meant to provide state education leaders with a broad look at how their peer states are handling similar challenges.

Opt-outs allowed

A few states have laws or regulations expressly allowing parents to opt out of assessments for any reason. **Utah**¹ and **California**² provide good examples of explicit opt-out language. Additionally, legislators in **New Jersey** and **North Dakota** recently introduced bills that would allow parents to opt out of assessments.

New Jersey's bill would require parents to provide written notification at least 14 days before the assessment and would require districts and schools to provide alternative activities.³ North Dakota's bill would require parents to be notified of their right to opt out prior to test administration.⁴ Another bill expressly permitting opt-outs was introduced this session in **Mississippi**, but subsequently died in committee.⁵

In several other states, opt-outs are not provided in statute but are permitted by the department of education. The **Minnesota** Department of Education, for example, has indicated that there are no consequences for students who opt out of state exams.⁶ Even though the completion of state exams is included as a graduation requirement, diplomas cannot be withheld from students who refuse to participate. Similarly, the **Michigan** Department of Education discourages but does not prohibit student opt-outs.⁷

Many states exempt students from participating in state assessments in cases of a physical disability, medical reasons or emergencies. Two states allow parents to opt out for a religious objection (see sidebar). Activist groups across the country have encouraged parents to use these limited exemptions as a basis for opting out even when students may not fit within the exemptions. This is occurring in Portland, **Oregon**, where activists are encouraging parents to opt out under the state's religious exemption.⁸

Opt-outs not allowed: The spectrum of guidance

In states that do not expressly allow students and parents to opt out, publicly available responses from state departments of education run along a spectrum from silence on the issue to state guidance or policies clearly prohibiting opt-outs.

Departments of education in several states – such as **New Jersey**⁹ and **South Carolina**¹⁰ – have given guidance to local district and school leadership that either prohibits schools and districts from allowing parents to opt their children out or expressly states that students must take state assessments.

Few state departments provide information directly to parents and the public about opting out. **Oregon**¹¹ and **Ohio**¹² appear to be two of the only states that take the extra step of providing public information, clearly outlining both the purpose of their state assessments and the potential consequences to not taking them.

In states that prohibit opting out of state assessments, departments frequently cite state policies. These policies usually require school districts to administer state assessments to all students in specified grades – sometimes with limited exceptions. In addition to requiring districts to administer assessments to all students, some states' policies also require students to take them. For example, state law in **Arkansas** says that participation in the state testing program is mandatory,¹³ while **Texas** does not allow parents to

Religious exemptions

Oregon¹⁶ and **Pennsylvania**¹⁷ excuse students from state testing to accommodate religious beliefs. In Pennsylvania, parents seem to be utilizing this policy to opt their students out of state tests.¹⁸ It doesn't appear the state has issued guidance to parents or districts on this issue, although some school districts are apparently taking disciplinary action against teachers who inform parents about this opt-out provision.¹⁹

Research on opt-outs and their impact

A **New Jersey** law firm has analyzed court cases and laws commonly cited by the parent advocacy group United Opt Out. The analysis concluded that these sources do not support a parent's right to opt students out of state assessments.²⁰

Research for Action's policy brief describes how opt-outs may positively or negatively impact school performance ratings and teacher and principal evaluations.²¹

remove a student from class or other school activity to avoid a test.¹⁴ Many departments of education also cite provisions from Section 1111 of the No Child Left Behind Act to support their stance that students must participate in state assessments.¹⁵

Finally, many states appear to be silent on the issue, meaning there is no publicly available communication from departments of education to local district and school leaders or the public about the state's stance on opting-out. In these cases, local district or school leaders may adopt their own policies. For example, a **North Dakota** school district informed parents that while state policies require the district to administer state assessments to all students, the district will not take action against any student who does not participate.²²

Loosening a state's grip on testing

A handful of states are seeking ways to bypass state laws to release districts from their testing obligations. In **Colorado**, the state Board of Education was stymied in its attempt to grant testing waivers to districts after the state attorney general determined that it does not have this authority. However, the board recently passed a motion that relieves districts of any penalty if fewer than 95 percent of students participate in testing because of opt-outs this spring.²³ The Department of Education encouraged districts to make a good faith effort to test all students in accordance with state and federal law.

In **Louisiana**, Gov. Bobby Jindal recently issued an executive order that could allow parent opt-outs, although stakeholders have requested that the Board of Education clarify the state's policy.²⁴

A parent rights state of mind: New York City

New York City's City Council is currently considering allowing parents to opt out of assessments.²⁵ A potential resolution, which will likely be released by publication of this paper, would ask the city's Education Department to add provisions about parent opt-out to the department's Parents' Bill of Rights and Responsibilities.

While **New York** state does not have a formal opt-out provision, the city's parent guide to assessment participation indicates that principals must respect the parents' decision about testing and work with parents to provide students with an alternate activity.²⁵

Related ECS resources:

For a high-level overview of which tests are taken where, check out our snapshot of states' assessment choices, *50 Ways to Test: A look at state summative assessments in 2014-15*.

To better understand the standards landscape, *States and the (not so) new standards – where are they now?* examines how states are affirming, modifying or replacing the Common Core State Standards and provides information about who controls standard-setting in various states.

Take a deeper dive with *State standard-setting processes*, which includes profiles of the actions taken in eight states, as well as the measures used by those states to validate their standards.

The following appendix provides a brief snapshot of information related to assessment opt-outs across the 50 states and District of Columbia, where available.

Appendix

Alabama

No information identified.

Alaska

No information identified.

Arizona

The Department of Education's [parent guide to understanding state assessments](#) clearly states that, per state and federal policies, parents may not allow students to opt out of state assessments.

Arkansas

According to the [state Department of Education](#), participation in state assessments is mandatory under state law unless the state Board of Education decides otherwise. However, the state board is not permitted to make accommodations that negate the validity of a statewide assessment, which result in less than 95 percent of all students attending public school participating in the testing program.

California

California law ([Cal. Educ. Code § 60615](#)) allows parents to [opt their children out of assessments](#) through a written request.

Districts are required to keep track of how many students were opted out by their parents.

Colorado

Although the state attorney general recently found that the state Board of Education does not have the authority to grant testing waivers to districts, the board recently passed a motion that seeks to exempt districts from any penalty if fewer than 95 percent of students participate in testing this spring.

Connecticut

The Department of Education clarified the state's policies on state assessments in [two separate documents](#) sent to district-level staff, namely that all students (with two minor exemptions) must take them.

Delaware

Citing state and federal law, the Department of Education's one-page [publication on opt-outs](#) states that students are exempt from state tests only for extreme medical incidents or for reasons of mental health.

District of Columbia

While information from the District of Columbia was not identified, [one high school](#) warned that students who do not participate in assessments will not be eligible to participate in sports next year.

Florida

Although information about Florida's position could not be located on the Department of Education's website, it appears that Florida does not allow students to opt out of assessments. Pam Stewart, the state's commissioner of education, wrote a [letter](#) to state Sen. Don Gaetz clarifying Florida's position and highlighting, in detail, the potential consequences of a student opting out. Interestingly, a Florida school district had voted to opt the entire district out of state tests but [reversed that decision](#) because of the consequences.

Georgia

No information identified.

Hawaii

Hawaii appears to require all students to participate in state assessments (see p. 14 of the state's [test administration manual](#)).

Idaho

Idaho [has no policy allowing for students to opt out](#). It appears that districts can make their own decisions, but the Department of Education provides help for any districts that need to respond to parents who want to opt out. The state's [Smarter Balanced Educator Communicators Toolkit](#) includes suggested answers to questions about opting out.

Illinois

The Illinois State Board of Education issued a [letter](#) to parents stating that students may not opt out of the PARCC assessment under state and federal law. The board also states that districts can develop a policy for those students who refuse to take assessments on testing days, but emphasizes that refusal would violate state and federal laws.

Indiana

[Indiana's Department of Education](#) acknowledges that it is not against the law for a parent to refuse to allow a child to participate in assessments but cautions that students must participate in statewide assessments to graduate. Additional consequences and procedures to manage students who refuse to participate are determined at the local school level.

Iowa

Iowa provides clear guidance on its Department of Education website, prohibiting opt-outs under state and federal law. The department provides that school districts determine the consequences for parents who choose to opt their children out.

Kansas

Opt-out issues are handled at the local level. Kansas expects a minimum of 95 percent participation this year.

Kentucky

The commissioner of education clarified that opting out of assessments is prohibited. He cited Kentucky statute [Ky. Rev. Stat. Ann. § 158.6453](#) and [703 Ky. Admin. Regs. 5:140](#) as creating an accountability system that is designed to ensure that all schools and districts are serving all students and that gaps in categories of students are identified, addressed and closed. The commissioner asked that schools explain to parents that all students must be tested to accomplish these goals.

Louisiana

In addition to efforts to remove the Common Core standards from his state, Gov. Bobby Jindal issued an [executive order](#) on Jan. 30, 2015, that could allow parent opt-outs. According to [news reports](#), the governor, state school boards association and a state teachers union, along with several districts and Common Core opponents, have requested that the Board of Elementary and Secondary Education schedule a special meeting to clarify the state's opt-out policy.

Maine

No information identified.

Maryland

According to a [brochure](#) released by the Maryland State Department of Education, while parents have a fundamental right to choose whether to send their children to a public school, they cannot selectively choose or reject parts of the public education program itself – including student testing. A parent-initiated [lawsuit](#) challenging mandatory assessments and confirming a parent's right to refuse testing in Maryland is pending.

Massachusetts

According to a 2014 [letter](#) from the state's commissioner of education, participation is mandatory because Massachusetts law ([Mass. Gen. Laws Ann. 69 §11](#)) does not contain an opt-out provision. However, the same letter requires schools to provide an alternative educational activity for students who refuse to participate in the assessment. Still, one [Massachusetts district](#) that allowed students to refuse to take a state pilot exam received a

[notice](#) from the Board of Elementary and Secondary Education reiterating the assessment mandate.

Michigan

According to a [report](#) by the Michigan Department of Education, there is no rule prohibiting parents from opting their students out of assessments. However, districts are encouraged to limit exemptions because they will be held to the requirement that 95 percent of their students complete the assessment.

Minnesota

Currently, no consequences exist for students in Minnesota who opt out of state exams. According to a [Department of Education presentation](#), although students in grade 8 and above are expected to participate in the exams in order to meet their graduation assessment requirements, diplomas will not be withheld from students who are absent during testing. While state statute does not specifically allow for opt-outs, it does not prevent students from refusing to participate. Some districts assist in this process by providing opt-out forms (like the form provided by Minneapolis Public Schools).

Mississippi

State statute ([Miss. Code Ann. § 37-16-7](#)) requires students to achieve a passing score on each of the required high school exit exams in order to receive their diploma. There is a [bill](#) working its way through the legislature that would prohibit entirely the state Board of Education and local school districts from including assessments in graduation requirements. [Another bill](#) that specifically granted parents the right to opt their children out of the exams and to formalize a procedure for opt-outs died in committee.

Missouri

Currently, no formal process exists for students to opt out of state assessments. A [Q&A report](#) by the Department of Education notes that districts are compelled by federal and state statute to assess all of the students in their district. [State statute](#) requires district school boards to establish a written policy on student participation in these exams.

Montana

No information was identified.

Nebraska

It is unclear if parents may opt out of state assessments on behalf of students. Some materials from the Department of Education (including the [2013 online test administration manual](#) and the [accountability scoring rules](#)) reference a mechanism for parent refusal of state assessments, but other materials do not. The

department's position on this issue is unclear.

Nevada

Apparently the Department of Education [allowed parents](#) to opt out of 2013 state assessment [field testing](#). No further information was identified.

New Hampshire

[State law](#) requires that assessments be administered in all school districts and that all students in all grades participate. According to a [release](#) from the Department of Education, public school children are legally required to take the assessment and parents have no legal right to opt their children out. [Exemptions exist](#) only in special circumstances, such as serious illness, severe emotional distress and participation in another state or alternative assessment.

New Jersey

The Department of Education sent [guidance](#) to district and school leadership on the opt-out issue, informing them that state and federal policy requires students to participate in statewide assessments and encouraging district and school leadership to inform parents and students why the assessments are important. According to a few news articles ([here](#) and [here](#)), Commissioner of Education David Hespe encouraged districts to create policies on handling opt outs, including potential disciplinary actions.

New Mexico

In [this assessment procedures manual](#), the Department of Education makes clear that federal and [state law](#) require all students to participate in state assessments. Students who refuse to take the test, with the exception of those who receive a state medical exemption, count against the school for A-F School Grades. Although alternative methods are identified, the state requests that students demonstrate competency in the five core subject areas through completion of the accountability assessment in order to meet graduation requirements.

New York

While there is a contingent in New York actively advocating for testing opt outs, the New York Department of Education issued guidance in 2013 clearly stating that there is no provision in statute or regulation allowing parents to opt their children out of state tests. Despite this guidance, education policy leaders in New York City are taking steps that would allow for opt outs (see sidebar).

North Carolina

According to a [handbook](#) released by the state Board of Education, [board policy](#) prevents students from opting out of exams. An exam answer sheet must be provided to all students. Students whose answer sheets are blank will receive the lowest

possible score and the student's course and overall grade point average may be negatively affected. A [memo](#) from the deputy state superintendent provides additional information to LEA superintendents and charter school directors about assessment mandates and the protocol for handling refusal requests.

North Dakota

There is no information from the Department of Education on this matter. However, legislators recently introduced [H.B. 1283](#), which would allow parents to opt out of state assessments and would require parents to be notified of their right to opt out prior to test administration. In addition, officials from the [West Fargo Public Schools District](#) disseminated information to parents informing them that while the district is required to administer assessments to all students, the district will not take action against any student and any student's family if the student does not complete the assessment.

Ohio

The Department of Education prepared a [document](#) outlining the importance of student participation in state tests and three possible consequences to opting out. Ohio is one of only a few states in which the department clearly and publicly outlined the potential consequences of students not taking state assessments. Some of those consequences include:

1. Third graders may be retained due to the state's third-grade reading and retention policies.
2. Opting out may affect high school graduation, as assessments are part of the state's graduation requirements.
3. English language learners may be delayed or prevented from exiting the English development program.

Oklahoma

The Department of Education does not provide opt-out options to students. According to a [report](#), statutory and Department of Education rules require all districts to provide a test to every student enrolled in respective testing grades. If a parent wants to opt a child out of an exam, the district must provide the test to the student and document the student's refusal to participate. The failure of a district to achieve a 95 percent participation rate will result in the district automatically earning a lower grade on the A-F report card.

Oregon

The Department of Education provides an [FAQ](#) on testing exemptions, which includes information about allowed exemptions (disabilities or religious beliefs) and the request process; federal and state requirements; how exemptions impact school accountability ratings; and the impact of opt-outs on

graduation.

Pennsylvania

State policy allows parents to opt their children out of state assessments if a test conflicts with a family's religious or moral beliefs, and parents seem to be using this policy. It doesn't appear the state has issued guidance to parents or districts on this issue, although some school districts are apparently taking disciplinary action against teachers who inform parents about this opt-out provision.

Rhode Island

The Department of Education expects all students to participate in statewide assessments, and students may only be exempted, with department approval, for medical reasons or emergencies.

South Carolina

One of South Carolina's state superintendents sent guidance to school district leaders on this issue. In short, state and federal policy does not provide opt-out provisions for parents or students.

South Dakota

State policies require districts to administer state assessments to all students (S.D. Code Ann. § 13-3-55; S.D. Admin. R. 24:55:07:08) and all students are required to take them (S.D. Admin. R. 24:55:07:01), with an exemption for English language learner students (S.D. Admin. R. 24:55:07:11). No information from the Department of Education was identified.

Tennessee

It does not appear that the Department of Education has issued any guidance on this issue. However, state achievement tests for students in grades 3-8 compose a percentage of the student's final grade, up to 25 percent (Tenn. Code Ann. §49-1-617). The department does allow for department-approved medical exemptions. Legislation enacted in 2014 allows parents to opt their student out of participating in a survey, analysis, or evaluation, but it is not clear if this extends to state assessments (Tenn. Code Ann. §49-2-211).

Texas

According to Texas law (Tex. Educ. Code Ann. § 26.010), parents are not entitled to remove a child from class or other school activity to avoid a test. Although no information from the Texas Education Agency was identified, the Texas Association of School Boards has provided guidance to school boards about opting out of standardized tests, including the potential consequences of missing these tests.

Utah

Utah law (Utah Code Ann. § 53A-15-1403(9)) allows parents to opt their children out of state assessments. These students are excluded from state accountability measures but cannot be excluded from federal accountability measures and reports. (Also see a recent memo from the Department of Education about the state's opt-out policy.)

Vermont

In 2014, the Department of Education issued a statement to help districts and school boards answer questions about opting out. In short, school districts are required to participate in state assessments and each school must account for 100 percent of its enrolled students by reporting a score or documenting a valid exemption, which include health or personal emergencies but not parent refusal.

Virginia

In a 2013 memo to school district leaders, the state superintendent clarified that state assessment regulations do not provide for an opt-out policy and gave procedures to follow for any students refusing to take assessments. One of the procedures strongly encourages schools to request a written statement from parents about the reason for refusal, which should be included in the student's file.

Washington

According to the Department of Education, a parent may refuse to have his/her child take state tests. However, high school students must pass certain state assessments before graduating.

West Virginia

No information was identified.

Wisconsin

Per state policy (Wis. Stat. § 118.30(2)(b)3), school districts in Wisconsin must excuse students in grades 4, 8 and 9-11 from state assessments at any time during the testing window upon the request of a parent. Students in other grades may only be excused at the discretion of the school board.

Wyoming

In 2014, the Department of Education requested an opinion from the Wyoming Attorney General's office regarding parent opt-outs from state-mandated testing. According to an opinion from the office of the state's attorney general, districts are required to assess all eligible students and students may not opt out of assessment.

ENDNOTES

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- 16 State of Oregon, Department of Education, Exemptions from Testing: Frequently Asked Questions (Oregon: Department of Education, 2015), http://www.ode.state.or.us/wma/teachlearn/testing/admin/asmt_exemption_faq.pdf (accessed February 24, 2015).
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